



May 3, 2007

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Ex Parte Notice

Re: Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act; Sunset of Exclusive Contract Prohibition, MB Docket No. 07-29

Dear Ms. Dortch:

PBS KIDS Sprout ("Sprout") hereby responds to three parties that submitted comments and reply comments in the above-captioned proceeding,¹ incorrectly alleging that Sprout's programming is not available to all multichannel video programming distributors ("MVPDs"). Sprout's programming, both linear and video-on-demand ("VOD") is, and always has been, available to all MVPDs.

Sprout is a twenty-four hour preschool programming network and VOD service for children ages two to five and their parents and caregivers. It was created as a partnership between the Public Broadcasting Service ("PBS"), Sesame Workshop, Comcast Corporation, and HIT Entertainment.² Sprout's programming network is currently available on digital cable and satellite to approximately 20 million homes.³ Sprout launched its VOD services in April 2005

¹ *In re Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act; Sunset of Exclusive Contract Prohibition*, Notice of Proposed Rulemaking, 22 FCC Rcd. 4252 (2007).

² See Press Release, PBS, *Big Bird, Barney and Bob The Builder Come Together In a Whole New Way As PBS KIDS Sprout Launches on Comcast, The Shows Preschoolers Love and Parents Trust Are Now Available to Watch Anytime* (Apr. 4, 2005).

³ Sprout is currently distributed by Comcast, Cox Communications, DIRECTV, Insight, RCN, Verizon, AT&T, and a number of smaller distributors.



and its programming network in September 2005.⁴ Sprout is a new entrant in an extremely competitive landscape of established children's television networks.⁵

In its comments, RCN claims that it was denied reasonable access to the Sprout VOD programming.⁶ AT&T and Verizon merely rehash RCN's claim.⁷ Neither make claims of their own concerning Sprout. RCN's comments -- and AT&T's and Verizon's mimicking of those comments -- are incorrect.* The simple truth is that Sprout programming, both its programming network and VOD service, is *and always has been* available to *all* MVPDs.⁹ In fact, RCN, AT&T, and Verizon all currently distribute Sprout's services.¹⁰

⁴ See R. Thomas Umstead, *On-Demand Net for Tots Sprouts on Cable*, Multichannel News, Apr. 4, 2005 (announcing launch of VOD service); Mike Reynolds, *PBS' New Kids' Net Sprouts*, Sept. 26, 2005 (announcing launch of linear channel).

⁵ See Mike Reynolds, *Long Hard Climb*, Multichannel News, Mar. 20, 2006 ("Six months into its existence, Sprout, a joint venture of Comcast Corp., PBS, and programmers HIT Entertainment and Sesame Workshop, reaches 18 million viewers, through Comcast Corp., Insight Communications Co., DirecTV Inc., RCN Corp. and other distributors. But its chief rival, 89 million-home Nickelodeon, dominates the commercial preschool market through its Nick Jr. block, while its educational spin-off service, Noggin, counts 46 million subscribers."). In addition to their linear offerings, several programmers offer VOD children's programming, including Nickelodeon, Noggin/The N, Nick Jr., Discovery KIDS, and the Cartoon Network.

⁶ See RCN Comments, MB Dkt No. 07-29, at 11 (Apr. 2, 2007).

⁷ See AT&T Comments, MB Dkt No. 07-29, at 15 (Apr. 2, 2007); Verizon Reply Comments, MB Dkt. 07-29, at 5-6 & n.10 (Apr. 16, 2007) (parroting RCN's claim that RCN suffered "competitive harm . . . as a result of the difficulties caused by Comcast in making available PBS Kids programming"). Demonstrating one of the dangers of repeating claims of another, AT&T's recitation of RCN's story is inconsistent with RCN's own false allegations. Compare AT&T Comments, MB Dkt No. 07-29, at 15 (claiming that RCN "suffered an 83% drop in VOD usage"), with RCN Comments, *supra* note 6 (claiming that RCN "experienced at [sic] 83% drop in usage of its *children's VOD service*" (emphasis added)).

⁸ RCN has made the same inaccurate claim in other Commission proceedings. For example, RCN raised similar allegations in the context of the sale of Adelphia, focusing on Sprout's decision to utilize Comcast Media Center ("CMC") for VOD transport and other services. See Letter from Jean L. Kiddoo, Counsel for RCN Corp., to Marlene Dortch, Secretary, FCC, MB Dkt. No. 05-192 (May 19, 2006); Letter from Jean L. Kiddoo, Counsel for RCN Corp., to Marlene Dortch, Secretary, FCC, MB Dkt. No. 05-192 (May 26, 2006). As explained previously, Sprout's decision to distribute its VOD content via CMC was based on sound business reasons. See Letter from Sandy Wax, President, PBS KIDS Sprout, to Marlene Dortch, Secretary, FCC, MB Dkt. No. 05-192, at 1-2 (June 5, 2006). Nevertheless, Sprout later agreed to continue to offer its VOD programming through TVN, an additional distributor, to all affiliates. See TVN Entertainment, *TVN Entertainment Signs PBS KIDS Sprout Agreement for VOD Services* (July 13, 2006), available at http://www.tvn.com/press_detail.asp?x=1&y=6&z=21&index=70&date=7/13/2006.

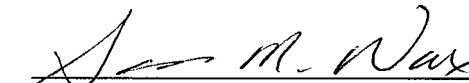
⁹ See Letter from Sandy Wax, *supra* note 8, at 2 ("[W]e have from the beginning made Sprout's VOD programming available to all distributors wishing to carry the service. . ."); Letter from Paul Greco, Vice President & Deputy General Counsel, PBS, to Commissioners Adelstein and Tate, FCC, MB Dkt. No. 05-192, at 2 (July 5, 2006) ("From its inception, Sprout has made clear that its mission includes making its programming services available as broadly as possible to cable and satellite operators nationwide.").

¹⁰ See RCN Comments, *supra* note 6, at 11 (indicating that RCN carries Sprout); Press Release, AT&T Inc., *AT&T U-verse TV to Include Comcast Networks' Content* (Sept. 14, 2006) (indicating that Sprout is carried on AT&T's cable service), available at <http://www.att.com/gen/press-room?pid=5097&cdyn=news&newsarticleid=22705>; Press Release, Verizon Communications Inc., *Verizon Signs* (footnote continued...)

Sprout also takes this opportunity to address assertions that Sprout is “must have” programming and, therefore, should be subject to more intrusive regulation.¹¹ Although we are proud of Sprout’s programming and hope that more and more consumers and MVPDs recognize its strong value for consumers, the fact is that Sprout launched its services quite recently and, of the nearly 100 million homes nationwide that subscribe to an MVPD, Sprout is carried by MVPDs that reach only about 20 percent of those homes. Given that Sprout’s services are available to MVPDs that serve all 100 million homes, it is clear that many of those MVPDs do not consider Sprout’s services “must have.” Moreover, given the highly competitive children’s programming landscape, the Commission has agreed that there are many substitutes for Sprout’s programming.¹²

If you have any questions on this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,


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(...footnote continued)

Agreements With Comcast for Comcast SportsNet-Philadelphia, PBS KIDS Sprout and Versus (Dec. 4, 2006), available at <http://newscenter.verizon.com/press-releases/verizon/2006/verizon-signs-agreements-with.html>.

¹¹ See AT&T Comments, *supra* note 7, at 14; RCN Comments, *supra* note 6, at 11; Verizon Reply Comments, *supra* note 7, at 6 & n.10.

¹² *In re Applications for Consent to the Assignment and/or Transfer of Control of Licenses from Adelphia Communications Corp. to Time Warner Cable Inc. and Comcast Corporation*, Memorandum Opinion & Order, 21 FCC Rcd. 8203 ¶ 168 & n.552 (2006) (stating that “[w]ith respect to RCN’s claims that PBS Kids and PBS Sprout programming qualify as ‘must have,’ we note that several substitutes exist for that programming”).